FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70864/2016-SM[BR] dated 11/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/50464/2015	YOGESH MITTAL DIRECTOR C/O M/S PRAHLAD ISPAT PVT LTD ETAWHA ROAD SHIKOHABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR,UTTAR PRADESH- 208005

Copy To

3Advocate(s) / Consultant(s):

JATIN MAHAJAN ADV
37, LGF, VINOBAPURI, LAJPAT
NAGAR-II NEW DELHI-110024

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1 8, Sector 10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. ~~16~~ Office Copy ~~17~~ Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD 211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : E/50464/2015- EX [SM]

Arising out of O/A No. 223-CE/APPL-LKO/AGRA/2014 dated 30.10.2014 passed by Commr. (Appeals) of Customs , Central Excise & Service Tax Lucknow .

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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Yogesh Mittal ...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Kanpur
...RESPONDENT(S)

APPEARANCE

On Merits, for the Appellant(s)
Shri D.K. Deb Assistant Commissioner (AR), for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 11. 08. 2016

Final ORDER NO. 70864/2016

Per Mr. Anil Choudhary :

The appellant, a director of a company namely M/s. Prahlad Ispat Pvt. Ltd., is in appeal against the order of imposition of penalty imposed vide Order-in-Appeal dated 30-10-2014, passed by Commissioner (Appeals) of Rs. 2,00,000/- under Rule 26 of the Central Excise Rules, 2002.

2. This appeal was earlier heard on 08-04-2016, when after some hearing time was allowed to file written submissions by the Counsel for the appellant. Subsequently, the ld. Counsel have filed his submissions stating that the Order-in-Appeal is beyond the scope of the Show Cause Notice as there is no proposal of penalty on the director under Rule 26 in Show Cause Notice. Further, it is urged that penalty on an individual/director cannot be imposed under Rule 25. It is further urged that the ld. Commissioner (Appeals) have not issued any Show Cause Notice on the appellant before imposing penalty, thus denying of the opportunity being heard.

3. The ld. A.R. relies on the impugned order.

4. Having considered the rival contentions, I find that no penalty was proposed on the director in Show Cause Notice, nor Rule 26 was invoked of Central Excise Rules, 2002. I further find that no Show Cause Notice was issued by the ld. Commissioner (Appeals) on the appellant before imposing penalty under Rule 26. Accordingly, I hold the imposition of penalty is ab-initio void and in violation of the provisions of natural justice.

5. Thus, the appeal is allowed and the impugned order is set aside to the extent, it imposes penalty on the appellant Mr. Yogesh Mittal. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

Certified True Copy
26.1.2016
Asst. Registrar
C.E.S.T.A.T.
ALLAHABAD-211001